IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1012 OF 2006

Pawan Ramswaroop Agarwal @
Pawan Nayey Sharma @ P.S. ..Appellant

Vs.

The State of Maharashtra ..Respondent

Mr. A.P. Mundargi, Senior Advocate with Mr.S.R. Mithare for the appellant.
Ms. Usha V. Kejriwal, APP for State.

CORAM: B.H. MARLAPALLE & R.S. MOHITE,JJ.

Date : March 05, 2007.

P.C.:

1. Heard Mr. Mundargi the learned Senior Counsel with Mr. Mithare for the appellant, who is an accused in Special Case No. 13 of 2005 under the M.C.O.C. Act before the Special Court at Mumbai. The accused had filed an application registered as Misc. Criminal Application No. 374 of 2005 praying for dropping the charges levelled against him under Section 3(1)(i), 3(2), 3(4) and 3(5) of the M.C.O.C. Act. Obviously, this application was filed under Section 227 of the Cr.P.C. and the same came to be rejected by the

Special Court on 6/8/2005 and hence this appeal against the said order under Section 12 of the M.C.O.C. Act.

2. We have noted that Misc. Criminal Application No. 374 of 2005 was submitted on the limited ground that another accused Shri Ramakant Jamunasingh was acquitted of the M.C.O.C. charges and the said acquittal came to be confirmed by the Apex Court as well. The grounds of challenge to the framing of charges was not raised either under Section 23(1) or Section 23(2) of the Act, which grounds were sought to be argued before us for the first time. We cannot entertain such a challenge before us when the same was not placed for consideration before the Special Court at the first instance and in our considered view the rejection of the application filed under Section 227 of Cr.P.C. on the grounds it was filed cannot be faulted with.

3. If the appellant desires to file a fresh application raising the grounds as are set out under Section 23(1) and Section 23(2) of the Act or either

of them, he will have to approach the Special Court. We are informed across the bar that the appellant-accused is on bail as at present and the trial has not yet commenced.

4. Hence the appeal is rejected with liberty as is available in law.

(R.S. Mohite, J.) **(B.H. Marlapalle,J.)**